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Peregrine Co., Inc. and Hiram Glenn Jr. Case 28–CA–22469

June 7, 2011

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS
PEARCE AND HAYES

The Acting General Counsel seeks default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge filed by employee Hiram Glenn Jr. on April 17, 2009, the Acting General Counsel issued the complaint on December 29, 2010, against Peregrine Co., Inc., the Respondent, alleging that it had violated Section 8(a)(3) and (1) of the Act. The Respondent filed an answer and an amended answer to the complaint.

Subsequently, the Respondent and Glenn entered into an informal settlement agreement, which was approved by the Regional Director for Region 28 on February 15, 2011. Pursuant to the terms of the settlement agreement, the Respondent agreed, among other things, to (1) post a notice to employees; (2) pay Glenn \$7500 in backpay within 14 days of the Regional Director's approval of the agreement; and (3) expunge from its files any reference to Glenn's discharge and notify Glenn in writing that it had taken that action and that the expunged material would not be used against him in any way.¹ The agreement also contained the following provision:

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the complaint previously issued on December 29, 2010, in the instant case(s). Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that the allegations of the aforementioned complaint will be deemed admitted and its Answer to such complaint will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the

Charged Party, on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is customary to remedy such violations. The parties further agree that the U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte.

On February 15, 2011, the compliance officer for Region 28 sent to the Respondent and Respondent's counsel copies of the notices to employees provided for by the terms of the settlement agreement, a letter detailing the Respondent's obligations under the agreement, and a certification of posting form, to be signed by an official of the Respondent and returned to Region 28.

The Respondent failed to respond and failed to comply with the terms of the settlement agreement. By email dated March 7, 2011, the compliance officer gave notice to the Respondent's counsel that the Respondent was in noncompliance. The email stated that under the terms of the settlement agreement, if the Respondent did not comply within 14 days, the Regional Director would reissue the complaint and the Acting General Counsel may file a Motion for Summary judgment. By letter to the Respondent's counsel dated March 9, 2011, the compliance officer repeated the substance of the March 7 email, emphasizing that the Respondent was on notice of its noncompliance. The Respondent again failed to respond and failed to comply with the settlement agreement.

Accordingly, on March 31, 2011, the Regional Director reissued the complaint, and on April 5, 2011, the Acting General Counsel filed a Motion for Default Judgment with the Board. On April 8, 2011, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. By letter dated April 18, 2011, the Respondent's counsel advised the Region that the Respondent would not comply with the settlement agreement as it had gone out of business and had no funds or resources with which to meet its obligations. The allegations in the motion are therefore undisputed.²

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondent has failed to comply with the terms of the settlement agreement by

¹ The notice to employees included in the settlement agreement states that Glenn waived reinstatement.

² As mentioned above, the settlement agreement provides that in case of noncompliance the complaint allegations will be deemed admitted and the only issue that may be raised before the Board is whether the Respondent defaulted on the terms of the settlement agreement. The Respondent's letter admits that it has defaulted. The Respondent's financial situation is not a legitimate defense for failing to comply with the terms of a settlement agreement. Nor is it otherwise a basis for denying the motion for default judgment. See, e.g., *Judd Contracting, Inc.*, 338 NLRB 676 fn. 3 (2002), *enfd.* 76 Fed. Appx. 651 (6th Cir. 2003).

failing to post a notice to employees, to remit the agreed-upon backpay amount to Glenn, and to expunge material from its files regarding Glenn's discharge. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued complaint are true.³ Accordingly, we grant the Acting General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, an Indiana corporation, with an office and place of business in Las Vegas, Nevada (the facility), has been engaged in the business of industrial and utilities installation, commercial excavation, slab preparation, and residential renovation.

During the 12-month period ending April 17, 2009, the Respondent, in the course of its business operations described above, performed services valued in excess of \$50,000 in states other than the State of Nevada.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Laborers International Union of North America Local 872, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.⁴

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Ronnie Davis	Vice President of Construction Services
Charles Smith	General Foreman
Scott Davey	Foreman

On about April 3, 2009, the Respondent discharged its employee Glenn at the Respondent's worksite located at 2755 Las Vegas Boulevard South, Las Vegas, Nevada.

The Respondent engaged in the conduct described above because Glenn formed, joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been discriminating in regard to the hire or tenure or

terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act, as requested by counsel for the Acting General Counsel. Specifically, the Respondent shall comply with the terms of the settlement agreement approved by the Regional Director for Region 28 on February 15, 2011, by posting a notice to employees, making Glenn whole by the payment of backpay provided for in the settlement agreement, and expunging from its files any reference to Glenn's discharge and informing Glenn in writing that it has taken that action and that the expunged material will not be used against him in any way. The backpay due under the settlement agreement shall be paid with interest at the rate prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB No. 8 (2010).

In limiting our affirmative remedies to those enumerated above, we are mindful that the Acting General Counsel is empowered under the default provision of the settlement agreement to seek "full remedy for the violations found as is customary to remedy such violations," including reinstatement and backpay beyond that specified in the agreement.⁵ However, in his Motion for Default Judgment, the Acting General Counsel has not sought such additional remedies and we will not, sua sponte, include them within this remedy.⁶

ORDER

The National Labor Relations Board orders that the Respondent, Peregrine Co., Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because of their support of or activity on behalf of Laborers International Union of North America Local 872, AFL-CIO, or any other union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

⁵ As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could "issue an order providing full remedy for the violations found as is customary to remedy such violations."

⁶ Although the Acting General Counsel's motion includes a catchall request to "grant such other relief as may be appropriate and proper to remedy the allegations in the reissued Complaint," we have construed the motion as a request to enforce the terms of the settlement agreement.

³ See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

⁴ On April 22, 2011, the Union joined in the Acting General Counsel's Motion for Default Judgment.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole Hiram Glenn Jr., by remitting \$7,500, plus interest, to Region 28 of the National Labor Relations Board to be disbursed to Hiram Glenn Jr., in accordance with the terms of the settlement agreement approved by the Regional Director on February 15, 2011.

(b) Remove from its files all references to Hiram Glenn Jr.'s discharge and notify Glenn in writing that this has been done and that the expunged material will not be referred to in any response to any inquiry from any employer, prospective employer, employment agency, unemployment insurance office, or reference seeker or otherwise used against him in any way.

(c) Within 14 days after service by the Region, post at its Las Vegas, Nevada facility copies of the attached notice marked "Appendix."⁷ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.⁸ Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 3, 2009.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 7, 2011

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against you because of your support of or activity on behalf of Laborers International Union of North America Local 872, AFL-CIO, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL immediately make whole Hiram Glenn Jr., with interest compounded on a daily basis, for the losses he suffered as a result of his discharge. Hiram Glenn Jr. has waived his right to reinstatement.

WE WILL remove from our files any reference to the separation of employment of Hiram Glenn Jr., and WE WILL notify him in writing that we have taken this action, and that the removed material will not be referred to in any response to any inquiry from any employer, prospective employer, employment agency, unemployment insurance office, or reference seeker or otherwise used against him in any way.

PEREGRINE CO., INC.

⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁸ For the reasons stated in his dissenting opinion in *J. Picini Flooring*, 356 NLRB No. 9 (2010), Member Hayes would not require electronic distribution of the notice.